

TOWN OF ACUSHNET SEA & FRESHWATER SHELL REGULATIONS

1.0 AUTHORITY

The Acushnet Board of Health adopts the following regulations in accordance with the provision of Massachusetts General Laws, Chapter 111, section 31, effective April 15, 2014. They are enacted under the authority which includes but is not limited to one or more of the following: M. G. L., c. 111, sections 31, 122, 122A. and 310 CMR 11.02. Board of Health regulations are an exercise of the power under which various levels of government are responsible for protection of the public, health, safety welfare, and the environment.

2.0 DEFINITIONS

2.1 Shells – The calcareous shell of a marine mollusk or similar marine organism.

2.2 Responsible Party – any property owner and/or lessee of property at which shells are handled, stored or stockpiled.

2.3 Commercial Handling Operations – The Responsible Party involved in the handling of shells for up to 100 cubic yards.

2.4 Storage Operations – The Responsible Party involved in the storage of shells over 100 cubic yards.

2.5 Stockpiling Operations – The Responsible Party involved in the stockpiling of shells over 500 cubic yards.

3.0 PURPOSE

The purpose of this regulation is to prevent the handling, storage and or stockpiling of any shells within the Town of Acushnet in a manner which would create a nuisance and/or offensive odors and/or become a source of nuisance vectors and/or become a public health or environmental hazard including but not limited to the addition of nutrients to groundwater.

4.0 RESPONSIBILITY

It is the duty of the Responsible Party, as defined in section 2, to insure compliance with this regulation and any other applicable local and/or state regulations and Statutes.

5.0 REGULATIONS

5.1 No Commercial Operation, Storage Operation or Stockpiling Operation shall handle, store or stockpile or otherwise maintain any shells other than clean shells free of meats and/or muscle.

5.2 The Responsible Party of a Commercial Operation shall obtain all necessary permits required by the state and/or town prior to the commencement of handling of shells up to 100 cubic yards. Notice of any such permit application and any such permit issued shall be given by the Responsible Party to the Board of Health.

5.3 The Responsible Party of a Storage Operation shall obtain all necessary permits required by the state and town prior to the commencement of a Storage Operation, and the Responsible party shall apply for and obtain a permit from the Board of Health and shall tender to the Board of Health an annual fee of \$200.00 for the purposes of conducting inspections to insure compliance with this regulation and such other permits as may be required. Notice of any state permit application and any such permit issued shall be given by the Responsible Party to the Board of Health at the time such permit is applied for or issued. Subject to the laws of the Commonwealth, the Board of Health and or its agents may enter upon the property where the operation is occurring for the purpose of inspection.

5.4 The Responsible Party of a Stockpiling Operation shall obtain all necessary permits required by the state and/or town prior to the commencement of a Stockpiling Operation and the Responsible Party shall apply for and obtain a permit from the Board of Health and shall tender an annual fee of \$200.00 for the purposes of conducting inspections to insure compliance with this regulation and such other permits as may be required, shall have a certification and/or a testing process to insure clean shells by source, apply for and obtain a site assignment from the Board of Health, submit to the Board of Health an engineered plan, stamped by a professional engineer showing the site topography and any structures, well locations, wetlands, flood plains, drainage calculations, two foot contours and any other information deemed necessary and relevant to the Board of Health in conjunction with said site assignment and permit application.

5.5 No permit or transfer of a permit shall be granted for any Storage or Stockpiling Operation until after a duly noticed public hearing. The public hearing shall be advertised in a local newspaper at least fourteen (14) days prior to the holding of such a hearing. No hearing shall be scheduled sooner than 30 days from the date of application. Additionally, all property owners within 100 feet of any property line of the proposed site shall be notified in writing by certified mail fourteen (14) days prior to the hearing and the Responsible Party shall demonstrate to the Board of Health that said property owners have been duly notified. A map showing all residences with the names of the property owners within the required 100 feet of proponent's property line of the operation shall be submitted with the request for a hearing. The applicant and/or owner of the proposed site shall assume all costs associated with said notification provisions.

5.6 The Board of Health shall render its decision in writing within thirty (30) days after the hearing or shall state in writing within thirty (30) days after the hearing why it will delay such a decision.

5.7 A permit applicant shall have the burden to demonstrate by a preponderance of the credible evidence that any proposed Storage or Stockpiling Operation will not create a public nuisance, cause offensive odors, or result in any public health or environmental hazards. If the Board of Health determines in its discretion that an applicant has failed to carry that burden, the permit may be denied.

5.8 The Responsible Party shall prevent any nuisance, offensive odors, or nuisance vectors from occurring as a result of the operation and shall prevent the operation from becoming a public health or environmental hazard as determined by the Board of Health. The Board of Health, or its Agents, will investigate any complaints made by residents of the Town or pertaining to the Town of the site of any operation subject to this Regulation. A determination will be made after inspection by the Board of Health or its Agents that offensive odors are being generated shall be conclusive that the operation is a public health hazard and in violation of these regulations.

5.9 Permits may be renewed annually, without hearing, pending pre-inspection of the operation.

5.10 Operations in business previous to these regulations shall not be grandfathered. Operations subject to these regulations shall immediately apply for permitting and a pre-inspection shall be done.

6.0 PENALTIES

Violations of any part of these regulations by the responsible party shall result in the immediate suspension of the permit to operate and the operation shall immediately cease and desist. Additionally, a two hundred dollar (\$200) non-criminal disposition fine may be assessed for any violations of this regulation. Each day that the violation exists will be considered a separate offense subject to an additional \$200. Two or more consecutive offenses within a twelve-month period may result in suspension of operation. In addition to or as an alternative to the above, the Board may elect to enforce these regulations through any means available in law or equity including criminal proceedings and/or injunctive relief.

7.0 HEARING

Anyone aggrieved by a decision of the Board of Health or notification of a violation with regard to this Regulation may obtain a hearing before the Board of Health by writing to the Board within seven (7) days from such a decision or notification of violation. The Board of Health, after hearing upon the application of any aggrieved party, may nullify, modify or uphold in whole or in part the decision or notification of violation.

8.0 ENFORCEMENT

The Acushnet Police Department and/or the Board of Health shall have authority to enforce this regulation through a non-criminal disposition.

9.0 REMEDIAL ACTION

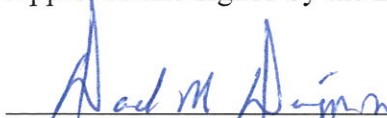
Notwithstanding any provision of this regulation, the Acushnet Board of Health reserves the right to take any action necessary to preserve public health and the environment, which is consistent with applicable law.

10.0 SEVERABILITY

Should any section, paragraph, sentence, clause, phrase, or word of these regulations be declared invalid for any reason, the remainder of said regulations shall not be affected thereby.

This Regulation will become effective on April 15, 2014

Approved and signed by the Board of Health on April 15, 2014



David M. Davignon, Chairman



Thomas Fortin, Clerk



Robert Medeiros, Inspector